APPENDIX C

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter Of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	MM Docket No. 92-266
	)	CS Docket No. 96-60
Leased Commercial Access	)	

DECLARATION OF
DR. MARK N. COOPER

1. My name is Dr. Mark N. Cooper. I am Director of Research at the Consumer Federation of America, and President of Citizens Research. I have testified approximately 100 times before 40 different state and federal regulatory agencies dealing with telecommunications, cable, and utility ratemaking.

2. It is clear that the proposal to price leased access channel capacity at an incremental cost does not involve a subsidy. A service which covers its incremental cost is not the recipient of a subsidy.

3. As the Federal Communications Commission well knows, definitions of incremental cost vary in both theory and practice. Moreover, under differing economic circumstances and for different regulatory or public policy purposes, it is appropriate to define incremental costs differently.

4. A service priced at the incremental cost identified by the Commission would be the beneficiary of the economies of scale and scope inherent in the cable company, but it would not be the recipient of a subsidy. For the public policy purposes identified in the Act, this is entirely appropriate.

5. Identifying revenues associated with the least-valued channel on the network and pricing leased access channel capacity at that level forces the lessee to make a contribution above incremental cost. Using the least-valued channel clearly identifies the lowest level of contribution that the cable operator is willing to carry as a commercial matter.

6. The fundamental flaw with opportunity cost is that in markets that are not fully competitive, opportunities are frequently the result of the decisions and practices of those who exercise market power. By restricting opportunities, monopolists can influence the very values that the regulator will use to price bottleneck elements (in this case channel capacity) that determine competitive opportunities. The process can become circular and self-defeating, not to mention exploitative.

7. Opportunity cost pricing is not necessary to prevent cross-subsidy and it adds a margin that goes beyond the theoretical limit that competitive firms in the market will operate at. To the extent that the Commission feels it must identify such revenues, to preserve the financial integrity of the cable firm, the Commission must be certain that revenue opportunities are not manipulated to preclude public interest use or competitive entry.

8. The fact that many cable systems have unused capacity suggests that they recover the fixed, joint and common costs of the system in prices and revenue opportunities for the more popular, higher valued channels. Under these circumstances, variable costs would be an appropriate measure of incremental costs and would not pose a threat to the financial integrity of the cable system.

9. Where unused capacity exists, only the variable costs of channel capacity should be imposed. Where all capacity is utilized, the Commission must carefully identify the marginal channel and carefully calculate the net revenue associated with that channel. To the extent that net revenues for that channel exceed a reasonable level of contribution to joint and common costs (i.e. in situations of excess profitability) contribution should be reduced to a reasonable level.

I declare under penalty of perjury that the foregoing is true and complete to the best of my information, knowledge and belief.

Date: May 31, 1996

Mark Cooper (mw)

Mark N. Cooper, Ph. D.

UNITED STATES CATHOLIC CONFERENCE

Department of Communications
United States Catholic Conference
3211 Fourth Street, N.E. Washington, D.C. 20017-1194 (202)541-3320 FAX (202)541-3129 TELEX 7400424

Statement of the Rev. Monsignor Francis J. Maniscalco
Director of Communications,
United States Catholic Conference

In Joint Comments filed by the Center for Media Education, Alliance for Community Media, Association of Independent Video and Filmmakers, Consumer Federation of America, National Association of Artists' Organizations, and United States Catholic Conference ("Joint Comments") on May 15, 1996 in this docket, United States Catholic Conference ("USCC") stated that the costs of paying for cable time preclude most Catholic dioceses, as well as USCC itself, from using any cable access channels offered for lease. In these reply comments, USCC offers some concrete examples to illustrate this statement.

The USCC is a nonprofit corporation organized under the laws of the District of Columbia exempt from federal taxes under section 501 (c)(3) of the Internal Revenue Code whose members are the active Catholic bishops of the United States. The USCC advocates and promotes the pastoral teachings of the bishops in such diverse areas as education, family life, health care, social welfare, immigration, civil rights, housing and communications.

Most of the more than 190 Catholic dioceses in the United States have a budget for all communications matters of $50,000 per year or less. Almost every diocese covers several counties, and therefore, to reach an entire diocesan audience, a diocese would have to lease time per week on several cable systems At the rates quoted at Appendix B of the Joint Comments, even if a diocese leased only one-hour each week in prime time from a several cable systems covering the diocese, it would have to spend up to $25,000 each year. With a $50,000 annual budget principally devoted to the salary of a communications director who serves as a media relations director for the bishop of the diocese, acquires or produce video and radio programs, develops and places print articles, and handles all press inquiries, it would have to cease up to half of the its necessary communications activities in order to lease time on cable systems. This is simply impossible.

Leasing an entire channel is beyond the means of dioceses. The quoted rates in the Joint Comments for a leased access channel comprise from twice to sixteen times the entire average communications budget for a diocese.

The USCC, which has an annual national charitable collection devoted to funding video, radio and print materials, could not afford to reach a national audience for even one hour per week by leasing from every cable system in the United States. At the average leased access rate for prime time quoted to the Joint Commenters, USCC would have to spend more than a forty per cent of its annual budget merely for leasing costs for 52 hours per year of cable time. Even more would have to be spent for additional staff to handle the acquisition rights and negotiations with cable systems throughout the country. Currently, USCC spends all of its dedicated grant monies of approximately $1.7 million per year and uses the full-time services of a few staff members to create programs and commission independant producers to develop them. Dedicating more than forty per cent of its current budget to leased access would force USCC to make an untenable choice between a means of distribution and content to be distributed.

USCC's entire budget for the creation and distribution of video, radio and print works would be dwarfed by the costs of leasing cable channels throughout the United States. To reach a national audience with a leased channel on nearly all cable systems would cost more than 2300 times the amount of communications grant monies raised by the USCC.

Rev. Monsignor Francis J. Maniscalco
Director of Communications
United States Catholic Conference
May 31, 1996

APPENDIX D

educational video center

Declaration of Steven S. Goodman

1. I, Steven S. Goodman, declare as follows:

2. My name is Steven S. Goodman. I am over the age of twenty-one and fully competent to make this declaration. I am a resident of the state of New York. My home address is 116 Pinehurst Avenue, New York, NY 10033. The statements contained in this declaration are within my personal knowledge or opinion, and each is true and correct.

3. I am the Executive Director and founder of the Educational Video Center, Inc. (EVC), a not-for-profit organization committed to providing inner city youth and educators with training in the creative production and thoughtful analysis of media. I have served in such a capacity since its inception in 1984.

4. The Educational Video Center, Inc. is registered as a 501(c)3 tax-exempt corporation, located in New York City. Its office address is 55 East 25th Street, Suite 407, New York, NY 10010. Its phone number is 212-725-3534.

5. The central mission of EVC is to provide young people with the knowledge, experience and access to video production facilities to produce documentaries that voice their concerns and reflect issues they confront at home, in school and in the streets of their communities. Over the years, teenagers at EVC have produced over sixty documentaries exploring a wide of social and cultural subjects including youth violence, race relations, substance abuse, equity in education, and environmental pollution. Their tapes have won over 100 festival awards including an Emmy, and have been screened in schools, libraries, museums and community centers across the country.

6. It has been widely accepted that youth-produced media are extremely effective in reaching and educating youth audiences because they recognize and respond to the faces, voices and issues in the video as similar to theirs. As a supporter of youth produced media, the U. S. Department of Education has contracted the Educational Video Center to have its youth produce two Public Service Announcements for Secretary Richard Riley's *America Goes Back To School* initiative.

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7. EVC is very interested in programming a cable television channel that would regularly carry the youth produced documentaries of the EVC as well as videos from the many other youth media programs across the country. We have access to hundreds of hours of high quality video tapes created by teenagers in our workshops and in schools we work with throughout New York City. This material would provide an invaluable service to youth audiences and the general public.

8. The rates to lease full-time cable channel capacity are extremely high, far more than most non-profit organizations can afford. A youth media channel would only be possible if the cable industry offered reduced non-profit rates for educational programmers.

9. The Educational Video Center supports the Center for Media Education and a coalition of other nonprofit and public interest groups in their proposal to the Federal Communications Commission for the implementation of substantially reduced rates for non-profit educational programmers. We believe this will serve the public by ensuring greater diversity of programming on television.

I declare under penalty of perjury that the above is true and correct. Signed the 31 of May 1996, in New York City.

Steven S. Goodman

Steven S. Goodman

METRONET

LINKING TWIN CITIES AREA LIBRARIES AND MEDIA CENTERS

May 23, 1996

Mr. Anthony Wright
Center for Media Education
1511 K Street NW, Suite 518
Washington, D.C. 20005

Dear Mr. Wright:

Metronet and the Minnesota Center for the Book are very concerned about the future opportunities for affordable and guaranteed access on the many established and developing telecommunications networks. The ability to deliver and receive information and communications is essential for libraries, non-profit institutions, government agencies, and educational facilities. A free and democratic society benefits greatly from the unrestricted flow of information to all its members and institutions.

Metronet and Minnesota Center for the Book are also the sponsors and co-producers of two widely-acclaimed cable television series which reach over 550,000 cable subscribers in the metropolitan area. The programs are
--**Northern Lights: A Look at Minnesota Books and Writers**
A weekly half hour program of interviews with Minnesota authors and coverage of literary events, such as the Minnesota Book Awards, publisher events, writers' seminars, author readings and book reviews;
--**All About Kids!** focusing on children's issues and activities and geared toward parents and adults who work with children... a weekly half hour "magazine format" show with interviews, edited features and documentaries, panel discussions, editorial commentary, and noteworthy happenings with legislators, national children's authors and artists, agency representatives, childcare experts, librarians and teachers.

The two program series are shown at set time slots in prime time on Metro Cable Network, the unique regional cable channel which is "Channel 6" on all cable franchises in the seven county metro area. Metronet was in the forefront over a decade ago to establish this important community resource, and the Director of Metronet has been a board member of the channel since its inception. With the advent of responsibility for the continued production of

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the two television programs (taking over from Hennepin County Library System when they closed their A/V operations), Metronet has entered into another collaborative partnership with a regional information provider. And, efforts in the near future will tie the television shows even closer with the public and community groups through increased marketing and promotion of the programs and direct links to Metronet's internet home page and e-mail capabilities.

These two programs, produced at minimal cost, reached a very large metropolitan community audience. Because of the breadth of outreach we are able to advertise the programs in a consistent manner, with metropolitan wide impact. We are able to link the cable programming with other community programming through libraries, schools and universities and community groups. The costs that we incur are both minimal and amortized over a very broad viewing audience.

The regional cable channel is a metropolitan resource of incredible power. We have the channel because of the diligent and persistent work of people at the local level who have assured over the past two decades that each cable franchise include the stipulation for the standard regional channel. It is a constant battle to maintain the channel access and high quality programming -- but it is price that we are more than willing to pay to maintain this powerful communication tool.

The work that we are doing here is extremely productive from our vantage point as well. We are a very small organization with very large outreach. The cable medium permits us to reach that audience with a consistent and powerful message. The long-term impact is astounding even to those of us who have maintained the vision for so long!

While Metronet, Minnesota Center for the Book, and the partnership of libraries, schools and community groups are all working hard to ensure access, connection, and a positive force in the emerging technology and telecommunications fields, we must have adequate support and funding from the national policy makers. On behalf of the "not-for-profit" information dispensers and handlers, we strongly urge your unwavering commitment and exertion of advocacy in the quest for appropriate accessibility and a prominent presence on the information superhighway.

Sincerely,

Mary Treacy, Director
Metronet/MN Center for the Book

Dave Carlson
Video Producer/Director

APPENDIX E

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter Of	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	MM Docket No. 92-266
	CS Docket No. 96-60
Leased Commercial Access	

AFFIDAVIT OF ROBERT G. PICARD, Ph.D.

I, Robert G. Picard, hereby depose and state:

1. I am editor of *The Journal of Media Economics* and a professor on the faculties of California State University, Fullerton, and the Turku School of Economics (Finland). I have written ten books and hundreds of articles on media economics and public policy, including the leading textbook, *Media Economics: Concepts and Issues*

2. I have previously testified before Congress and submitted materials to the Commission during deliberations on matters involving cable television and crossownership.

3. I have reviewed comments filed with the Commission by the National Cable Television Association, Inc., Tele-Communications, Inc., Time Warner Cable, and their consultants.

Although their arguments are presented as economic analysis, the arguments are primarily speculation without evidence because there are no data on which to base their arguments. I will review and comment on some of the major points raised in their speculation.

4. The opponents of leased commercial access focus the bulk of their arguments on the value of channels to subscribers, correctly recognizing that cable subscribers consider the totality of the offerings available when making subscription choices or choices between cable and other delivery services.

The opponents then assert a loss of value will occur if some channels are replaced by leased access. This analysis is flawed because it assumes that only channels currently carried have value to subscribers and that leased access channels will have no value to subscribers. Such a proposition is without basis in fact or fancy

Leased access programmers can only become successful and use up capacity made available for such access if they appeal to and become valuable to audiences. This can occur only if they gain sufficient sales from goods and services (in the case of infomercial programmers and shopping networks), if they attract large enough audiences to gain advertisers' support, if they attract large enough audiences that are willing to provide donations to keep the programming on the air or if the programmers obtain other external financing (as in the of not-for-profit organizations).

If any of these three scenarios occurs, it will be the result of audiences finding the leased access programming choices have value. If these scenarios do not occur, demand for leased access will not increase to the point it uses the capacity designated for such potential use and systems will be able to continue using that capacity as they do now

5. In the Comments of the National Cable Television Association, Inc., the association proposes an average channel rate formula to be used in establishing leased access rates. This approach is flawed and the ultimate result of the use of this formula is that users of leased access would, in fact, subsidize other highly profitable channels and operations of the system operator.

The approach assumes that the return on subscriber sales for all channels in both basic and CPS are similar and it assumes that the value of leased access channels and any "bumped" channels are similar to purchasers of basic and CPS tiers. More importantly, however, the approach fails to account for the diminishing marginal utility of additional channels for subscribers and assumes that all channels are equally valuable and equally significant in the decisions of all cable subscribers.

The only possibly justifiable use for such an average channel rate formula would only be if it included only channels potentially affected by the leased commercial access proposals, that is, the lowest-rated channels that fall within percentage capacity requirements for such access.

6. Opponents express concerns about the placement of leased access channels in the basic subscription tier asserting that such placement will provide value to the leased access providers through the greater audience potential that exists in that tier. Placing them in the basic tier does provide that advantage but doing so cannot be considered a subsidy under any definition of that term.

If leased access programmers are placed in the basic service tier, they will provide compensating value to the systems by providing--at not cost to the system--additional programming choices that makes basic tier services more attractive to subscribers. This is an added compensation to the lease payments made to systems by the programmers.

The addition of leased access channels to the basic service tier in itself does nothing that forces systems to alter the channels they currently offer in that tier.

7. Opponents approach leased access programming from a very limited viewpoint, seeing it only as infomercial services and shopping networks. They ignore the potential for use by not-for-profit organizations ranging from local, state, and national cultural, social, political, and religious organizations and the potential for the establishment of regularly programmed channels based on their offerings. Leased access channels operating in such a fashion could provide significantly diverse programming with that serves social needs but also provides economic value to subscribers and cable system operators.

8. The systems operators argue that using capacity for leased access will force them to replace existing channels and thus diminish the value of subscribing. They do so assuming that 1) leased access will provide less desirable programming than that currently carried; 2) it will replace channels that are more desirable; and 3) it will result in a tremendous affect on demand for service by subscribers and potential subscribers.

The first assumption is completely speculative and cannot be reasonably argued or refuted. The second assumption is difficult for the opponents to maintain because they admit they will

replace less desirable programming, generally those with audience shares under 1 percent, with leased access. When systems replace channels, it will be in their economic interest to give up those which produce the lowest audiences or those that do not provide value that assists in making tiers of service or marketing those tiers of service.
It is specious to suggest that operators will give up highly desirable channels or those that provide important marketing and service functions such as C-SPAN, etc.

The third assumption, that leased access will significantly affect demand, is also problematic since the channels least affecting demand may be displaced. Because these additional channels have very little value to most subscribers, changes in the programming offered on them cannot be expected to significantly change demand in that group. There may, however, be a demand effect on the small group of subscribers to each system who are among the viewers of those less-used channels. Thus, opponents are correct in their assertion that their may be an effect on subscription but the degree of that affect is highly overstated in the filings. Opponents proposals for increased compensation for lost subscription revenues are based on the assumptions that the effects will be far more extensive than warranted

9. Opponents present the Commission with conflicting arguments over the effect of leased access. They argue that there is no significant unmet demand for leased access because costs are and will be prohibitive ("Comments of Time Warner Cable," p. 28) and then argue that if they are asked to cede 10 to 15 percent of channel capacity the systems will be severely damaged ("Affidavit of Madison Bond," attachment B in "Comments of Tele-Communications Inc. and Request for

Further Reconsideration," p 1) How leased access suddenly becomes so economically attractive and functional is conveniently ignored

10. In determining opportunity costs for rate setting purposes, dark channels should be excluded from any calculations. There is no lost opportunity cost of dark channels that should be borne by leased access programmers because it is a system managers' choice. Any programming provided by leased access will add some value to some subscribers that provides more benefit than nonoperation.

I declare under penalty of perjury that the foregoing is true and complete to the best of my information, knowledge, and belief.

5/30/96
Date

Robert G. Picard, Ph.D.